

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 ANTHONY DEFRANCO :
4 Appellant :
5 v. : Civ. No. 04-CV-00230E
6 WILLIAM WOLFE, :
7 SUPERINTENDENT, et al., :
8 Defendants :

9 Motion Hearing in the above-captioned matter
10 held on December 17, 2004, commencing at 10:45 a.m.,
11 before the Honorable Susan Paradise Baxter, at the
12 United States Courthouse, 17 South Park Row, Erie,
13 PA 16501.

14
15
16 For the Appellant:

17 Anthony DeFranco, Pro Se
18
19

20 For the Defendants:

21 Christian D. Bareford, Esquire
22 Office of Attorney General
23 6th Floor, Manor Complex
24 564 Forbes Avenue
25 Pittsburgh, PA 15219

 Reported by Sonya Hoffman
 Ferguson & Holdnack Reporting, Inc.

I N D E X

ANGELA LINDEMUTH

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10:27AM MS. WALLEN: The case before the Court is Anthony
2 DeFranco versus William Wolfe, et al. It's docketed at
3 Civil Action No. 04-230E. Mr. DeFranco is representing
4 himself pro se. Representing the Defendants is Christian
10:45AM Bareford of the Attorney General's office.

6 THE COURT: Good morning. We're here because the
7 temporary retraining order, as you know, elapsed after 10
8 days, and the preliminary injunction motion is still
9 pending. And we need to have some evidence put forth on the
10:46AM things that I heard on the telephonic hearing for the -- for
11 the TRO.

12 So the motion is actually yours, Mr. DeFranco.
13 It's you that has to begin the process. Do you have some
14 folks you want to have to testify, or do you have any
10:46AM evidence that you'd like to give us -- documentary evidence?

16 MR. DEFRANCO: I have both, Your Honor. I would like
17 to initially call Dr. Lindemuth.

18 THE COURT: All right. To the stand?

19 MR. DEFRANCO: Yes.

10:46AM THE COURT: All right. Dr. Lindemuth is here?

21 MR. DEFRANCO: Yes. May I -- if there's any witnesses
22 that the Attorney General is calling, I'd like them excluded
23 from the courtroom.

24 THE COURT: Is there anyone in here that you're going
10:47AM to be calling?

10:47AM MR. BAREFORD: Yes, ma'am. We've got several officials
2 from the State Correction Institution at Albion. I don't
3 know -- I'm not entirely certain whether or not it will be
4 necessary to call all of them. But I'd be more than happy
10:47AM to --

6 THE COURT: To exclude them.

7 MR. BAREFORD: Yes.

8 THE COURT: There are seats out in the waiting area
9 over there and in the hallway outside of Courtroom C, as
10:47AM well. Thank you.

11 Is that everyone? Dr. Lindemuth, can you come up
12 here please and we'll swear you in.

13
14 A N G E L A L I N D E M U T H, first having
10:48AM been duly sworn, testified as follows:

16
17 THE COURT: Please state your full name for the record
18 and spell your last name.

19 THE WITNESS: My name is Angela Lindemuth,
10:48AM L-I-N-D-E-M-U-T-H.

21 THE COURT: All right. You may begin questioning her.

22

23 DIRECT EXAMINATION

24 BY MR. DEFRANCO:

10:48AM

10:48AM Q. Good morning, Doctor.

2 A. Good morning.

3 Q. I'd like to ask you if you recall in August of
4 2002 our discussion about a Z Code to a single cell being
10:48AM lifted from me?

6 A. Yes.

7 Q. And do you recall agreements that I showed you
8 that you looked at and they may lobby that I planned on
9 filing against the Defendants in this case?

10:49AM A. Yes.

11 Q. And that was approximately in August of 2002,
12 correct?

13 A. Yes.

14 Q. It came to my attention in the Defendants'
10:49AM objections, in their pleadings, that you gave a notarized
16 statement to Mr. William Barr, I believe.

17 A. Yes.

18 Q. Which is -- sort of contradicts your letter of
19 recommendation I should be detained. What I'd like to --

10:49AM THE COURT: Let me find that letter. I have it here.
21 Is it attached to the -- do you have a copy for
22 Dr. Lindemuth to use?

23 MR. DEFRANCO: Yes, I do, Your Honor.

24 THE COURT: We will give that to her. Do you have a
10:50AM copy you can use as well?

10:50AM MR. DEFRANCO: Yes, Your Honor.

2 THE COURT: And the affidavit is dated 11/8/04; is that
3 correct?

4 MR. DEFRANCO: 11/8/04. We have it.

10:50AM THE COURT: Okay.

6 MR. DEFRANCO: Your Honor, I'd ask since I'm not
7 represented by counsel --

8 THE COURT: Yes, sir.

9 MR. DEFRANCO: -- I'm on medication and my retention
10:50AM expense is not that good. I have a family member that's a
11 physician that could help in me asking questions who's
12 sitting in the courtroom today.

13 THE COURT: I can't allow that, I'm sorry. You have to
14 represent yourself or be represented by an attorney. And
10:50AM those are the only people who can ask questions.

16 MR. DEFRANCO: Okay.

17 THE COURT: I'll give you opportunities to recess and
18 talk to him. I'll give you that opportunity, but he can't
19 ask the questions.

10:50AM MR. DEFRANCO: I was going to ask if he could write
21 them down with me.

22 THE COURT: Well, do you have any objections to that if
23 he sits by the --

24 MR. BAREFORD: Yes, ma'am, I do. And just for purposes
10:51AM of identification of who this witness is, other than if it

10:51AM is his brother. And also to the degree that he's going to
2 provide assistance to the Plaintiff in the case, that the
3 manner in which that assistance is going to be provided may
4 present, or at least --

10:51AM THE COURT: Present a legal representation.

6 MR. BAREFORD: Yes, ma'am.

7 THE COURT: How about if we do it this way -- and also
8 I don't want to have anybody getting excited here about
9 security; so how about if we allow you to begin questioning
10:51AM and then we'll take a short break and you can speak to your
11 brother. Would we have any problem on that security-wise?

12 MR. BAREFORD: I don't think so, Your Honor.

13 THE COURT: If he writes down the questions, it's just
14 as though he's asking them, so that would be the same legal
10:51AM problem we have since you are proceeding pro se, all right?

16 MR. DEFRANCO: Okay.

17 THE COURT: Okay. That's how we'll solve that. And
18 when you are at a brick wall and you need to, you tell me.

19 MR. DEFRANCO: Okay.

10:52AM BY MR. DEFRANCO:

21 Q. Dr. Lindemuth, that affidavit that you have in
22 front of you was, I believe, signed by you on November the
23 8th.

24 A. Correct.

10:52AM Q. And that would have been after a hearing was held

10:52AM before Judge Baxter in this case.

2 A. Yes.

3 Q. Okay. Can you -- did you write that affidavit
4 out?

10:52AM A. I -- I -- well, this is what --

6 MR. DEFRANCO: Excuse me, I don't mean to interrupt
7 you. Your Honor, I would like the record to reflect and I'd
8 like you to instruct the witness she's under oath and what
9 that means and what the penalty is.

10:53AM THE COURT: I think she understands what that means.
11 She'll answer it.

12 A. I signed this. Did I actually type this, no -- I
13 didn't type it, but I explained on my stance to Mr. Barr and
14 this was typed there and all of this information here is in
10:53AM agreement with what I discussed with -- so whether I

16 actually took the typewriter and typed this out on my own,
17 is not really --

18 Q. That was my question.

19 A. This all concurs with what we discussed with
10:53AM Mr. Barr regarding just before this affidavit was issued.

21 THE COURT: All right.

22 Q. Okay. You've been treating me since 2001,
23 correct, Dr. Lindemuth?

24 A. April of --

10:54AM Q. 2001.

10:54AM A. 2001, yeah.

2 Q. And I don't want to go back. I guess I'll just go
3 ahead with this line first jumping ahead; but can you tell
4 me and the Court, your office is located in the med.

10:54AM building, correct, medication -- or the health care
6 facility, Room No. 1?

7 A. Yes.

8 Q. And your door is always open, correct, usually?

9 A. Usually open.

10:54AM Q. Right. And there's another room adjacent to that
11 where people come in and out?

12 A. Well, there was another office there with the
13 infections control nurse.

14 Q. And the Xerox machine outside.

10:55AM A. There's a Xerox machine now outside there, yes.

16 Q. I just needed to verify that. Do you recall our
17 last meeting? And I don't want to put you on the spot, I
18 know that I am, but I don't mean to be with Mr. Barr being
19 here, that we had a meeting on November 19th that would have

10:55AM been after the hearing before Judge Baxter in which you told
21 me about Mr. Barr meeting with you and another woman. And
22 that Mr. Barr --

23 THE COURT: Well, let's get that far; do you recall
24 that meeting?

10:55AM A. Yes. That was accurate and truthful, yes.

10:55AM Q. Could you tell me exactly what was said by
2 Mr. Barr to you during that meeting?

3 A. Well, the issue of -- was that the -- the memo
4 which I directed to the Z Code committee had been applied in
10:56AM your -- I guess, a Federal appeal in your case or something,
6 okay.

7 So I concurred with Mr. Barr that I didn't plan it
8 to lead to anything like this. It was just basically a
9 simple memo addressed to the Z Code committee making a
10:56AM recommendation, which they could either decline or grant.

11 Q. So what you're testifying to is this, essentially
12 that it's okay if Mr. Barr or the DOC sees this document,
13 but it's not okay for a Federal judge to see it?

14 MR. BAREFORD: Ma'am, just to the extent that -- just
10:57AM to remind the witness that her testimony actually speaks for
16 itself, and with Mr. DeFranco, the way that he's
17 characterizing his following questions -- actually,
18 recharacterizing her answer and then asking --

19 THE COURT: Well, he's asking her if that's what she
10:57AM just said and she can answer that.

21 MR. BAREFORD: Yes, ma'am.

22 THE COURT: Overruled. You can answer that. Is it
23 that you believed -- or in rephrasing the question, that the
24 letter was meant only for the eyes of the committee and
10:57AM Mr. Barr and not for the Court in a TRO hearing setting?

10:57AM A. Well, yeah. I had -- it didn't cross my mind that
2 it would be submitted to any higher legal entity. It was
3 really directed, and that's how I addressed it, to the Z
4 Code committee that makes -- in fact, I conveyed my
10:58AM skepticism of that to -- to Mr. DeFranco, that it's likely
6 not going to fly and the Z Code committee is really going to
7 accept it necessarily because there are so many other
8 individuals, many inmates, that are really very much the
9 same in their demeanor and conduct and history as
10:58AM Mr. DeFranco, that they're unpredictable, they're volatile,
11 they're aggressive, and so on.

12 And even though ideally all of these inmates would
13 probably be more -- it would be more suitable for these
14 individuals ideally to be in a single cell, it is not
10:59AM practical. So I did convey that to him. I said, well, I
16 can give -- I can give this memo, but don't count on
17 anything changing.

18 My -- my primary purpose was really kind of a
19 supportive therapy, and that was a -- that was a modality of
10:59AM supportive therapy, which is to -- as a psychiatrist, to
21 validate a patient's concern and to do not just medication
22 therapy, but to put -- to apply any other input or drug
23 medication that I can even though the outcome is -- isn't
24 the -- lies in the hands of the Z Code committee.

11:00AM But just my act of accepting to write this and my

11:00AM willingness and the fact that there's an alliance there and
2 reassurance, it was just, again, a -- amounted really to a
3 supportive therapy. So it wasn't so much the result that
4 was what I intended, it was the act or the process of doing
11:00AM something that would appease -- would appease the inmate.

6 Q. So my heart problem, that doesn't concern you at
7 all, ma'am?

8 A. Well, the heart problem -- again, I don't know how
9 you're going to tie it into the single cell status --

11:01AM THE COURT: Well, I can answer that.

11 Q. You tie in --

12 THE COURT: I can answer that. This is what I
13 partially based my recommendation for the temporary
14 retraining order, which has expired, so I would appreciate a
11:01AM response on this.

16 It was my understanding from the evidence that was
17 given to me at that hearing that having been in a two-person
18 cell for a period of time has increased his heart medication
19 and increased his heart problems that he didn't take as much
11:01AM medicine, he didn't have as many problems, as in a
21 two-person cell.

22 THE WITNESS: Yes. Now, that could be coincidentally
23 because as individuals age and, you know, the progression of
24 heart disease is usually for the worse as times goes on.

11:02AM But, again, any -- all cardiac patients are advised to

11:02AM reduce stress, and in being in a double cell constitutes a
2 stress obviously that would be adverse to his cardiac
3 status.

4 But then there are stressors that are inherent to
11:02AM prison life, and certainly we have all kinds of individuals
6 that have stress-related illnesses, which if they have to be
7 in an ideal condition, then they might not have as much
8 trouble controlling the sugar or not as much trouble
9 controlling the blood pressure, not as many episodes of
11:03AM chest pain. So you could argue that -- I mean, this would
11 apply to all individuals that stress would have a negative
12 impact on their illness.

13 THE COURT: I have another question: When you
14 testified previously that there are a lot of prisoners who
11:03AM would benefit from a single cell, but it's just not
16 practical and they have somewhat similar illnesses as the
17 Plaintiff, are any of those prisoners also exhibiting the
18 heart condition that the Plaintiff exhibits?

19 THE WITNESS: Oh, yes. There -- I mean, we have large
11:04AM numbers of individuals who are cardiac patients, who are
21 diabetics --

22 THE COURT: And they're psychiatric patients as well?

23 THE WITNESS: And psychiatric patients as well,
24 absolutely.

11:04AM THE COURT: Are they housed in a single cell?

11:04AM THE WITNESS: No. Not unless they have met whatever
2 criteria, which mental health apparently is no longer a
3 criteria for a single cell. If they -- for instance, if
4 they're homosexual, that would be a criteria, but there are
11:04AM very, very few.

6 MR. BAREFORD: Well, ma'am, if I may be heard on this.
7 We are prepared to call an additional witness who can
8 actually perhaps better explain the medical condition and
9 the medications --

11:05AM THE COURT: Well, I'll ask questions of that witness,
11 too.

12 MR. BAREFORD: Yes, ma'am. But just for purposes of
13 just to indicate that we're prepared to bring someone in and
14 that could probably also provide some additional context.

11:05AM THE COURT: Now, I'm going to be interrupting you, Mr.
16 DeFranco, regularly, because I do ask questions.

17 MR. DEFRANCO: That's fine.

18 THE COURT: But my point is to get it right. We are
19 not in trial and we're not in front of a jury. So, go ahead,
11:05AM excuse me.

21 BY MR. DEFRANCO:

22 Q. Dr. Lindemuth, in your meeting with Mr. Barr, was
23 it specifically asserted to you that it was not going to be
24 tolerated by the DOC that these recommendations that you
11:05AM wrote for me would set a dangerous precedent that they were

11:05AM concerned about? That's a yes or no answer, please.

2 THE COURT: She's allowed to explain a yes or no, Mr.
3 DeFranco.

4 A. Well, first of all, I was pretty astounded that
11:06AM this had gone to the level of, you know, Federal
6 jurisdiction. So I was the one who expressed my dismay
7 that -- that this had reached this level and that now it was
8 going to involve all of these people. And basically, the
9 memo was just a memo and that there was nothing more
11:06AM intended than that.

11 And when I was told that actually the Federal
12 Court had dictated that -- dictated to the State prison
13 that -- to -- for you to be granted a single cell, that
14 really astounded me and I said that this is not what I
11:07AM intended.

16 Q. This came from Mr. Barr, correct? Mr. Barr told
17 you that the Federal Court intervened and told them what to
18 do.

19 A. Well, he had to explain why he called me -- he
11:07AM called me to -- I mean, I didn't know. I went to the office
21 one day because I was called down. And so I went down there
22 and, yes, he did explain why I was coming to the office.
23 And then I was very shocked that --

24 Q. Well --

11:07AM MS. WALLEN: Sir, one at a time. Let her finish and

11:07AM then you can speak to the Court.

2 A. Yeah. Of course, he had to tell me why -- he had
3 to explain to me why that this -- he explained to me your
4 view because this case is happening, and I was pretty

11:07AM shocked that it had reached that level. I had no idea that,
6 you know, the Federal Court would intervene. Again, this
7 was directed -- this little note is --

8 Q. It's a recommendation. It's not a note, it's a
9 recommendation and --

11:08AM THE COURT: Her testimony is as it is.

11 MR. DEFRANCO: Right. But it says recommendation.

12 THE COURT: You can testify.

13 MR. DEFRANCO: Okay. But my point is this, it's
14 obvious that the Defendants have spoken to this witness.

11:08AM THE COURT: Well, you ask her that. You ask her that.
16 And then you can make that argument to me after, okay?

17 MR. DEFRANCO: Okay.

18 BY MR. DEFRANCO:

19 Q. How many of these memos have you written, Doctor?

11:08AM A. Well, this is your -- I had one before for you.

21 Q. You had two for me. I'm talking about what
22 inmate, how many recommendations to the Z Code committee
23 have you written?

24 A. Well, I don't -- if -- if we can't get beyond the

11:08AM treatment because of the Z Code, Z Code is the total focus

11:08AM of the individual, and as I said, this is a therapeutic
2 maneuver, a therapeutic modality. It's a supportive
3 modality, it's not intended to dictate to the Z Code or
4 anyone, it's a recommendation for anyone that you have to --
11:09AM it's a recommendation. It's like validating your concern.

6 Q. I understand that.

7 A. And an example of that is taking your concern,
8 which constitutes a therapeutic --

9 Q. I don't --

11:09AM A. -- conduct.

11 Q. You're not answering my question. My question is,
12 specifically: How many of these recommendations have you
13 wrote for inmates to get a Z Code?

14 A. Well, very few because of --

11:09AM Q. Approximately, how many?

16 A. It's probably been maybe a handful. I would say
17 about four or five at the most.

18 Q. It's very rare that you do that?

19 A. It is, because I'm aware of the fact that, you
11:09AM know, even if they complain to me that, oh, I lost my Z
21 Code, I know that circumstances of the correctional system
22 are such that it's not possible for -- I mean, certainly
23 everyone who's in prison would prefer to be in a single
24 cell, of course.

11:10AM Q. Well, you were aware that I was Z Coded prior to

11:10AM this.

2 A. I'm aware of that.

3 Q. And I was allegedly threatening -- they say it was
4 a true threat and ultimately they took it as a true threat
11:10AM that I threatened an officer's life. And according to

6 Mr. Barr's declaration, he stated that this happened in

7 March of 2002. I went in the hole for 45 days, I come out

8 of the hole, so it would be approximately May 10th of the

9 same year. The next month, according to Mr. Barr, my Z Code

11:10AM is lifted. Now, he said in his declaration that inmates are
11 reviewed annually, if they show significant progress that's
12 the only time a Z Code can be lifted.

13 Now, my question is this: Threatening a staff's

14 life, does that constitute significant progress in your

11:11AM eyes?

16 A. Well, you've got to understand that with your
17 character logic disturbance, you know, being -- having a
18 propensity towards threatening and violence is going to be
19 persistent -- pervasive -- it's going to be pervasive,

11:11AM right?

21 So that, I wouldn't -- you know, threatening -- I
22 mean, we can't -- everyone there is very aggressive -- or a
23 large percentage are very aggressive and a large percentage
24 will either threaten a cell mate or one of the staff or CO,

11:12AM but that cannot constitute criteria for single cell, of

11:12AM course, because --

2 Q. You're missing the whole point, I was already Z
3 Coded.

4 THE COURT: She's not answering the question.

11:12AM Q. You're missing the whole point, you're very
6 evasive.

7 THE COURT: Excuse me, he asked you whether being
8 charged and spending time in restrictive housing for
9 threatening an officer would be considered significant

11:12AM progress to have him placed outside of Z Code status. So
11 answer that first and then you can explain.

12 A. Progress -- see, with any social personality and
13 character style that is not -- I mean, we cannot change that
14 character logic disposition you have for -- in fact, that --

11:12AM THE COURT: So your answer is, no, that's not
16 significant if a person --

17 A. Exactly. That's not deemed in your case as
18 either -- it's just part -- it's part of your inherent
19 character style. And, you know even in the most ideal
11:13AM conditions, you still, if you were provoked, even with a
21 minor trigger, you would tend to use these defense
22 mechanisms of wanting to threaten or strike somebody.
23 That's why you're in prison, right, for violence.

24 THE COURT: Do you understand her answer?

11:13AM MR. DEFRANCO: I understand her long answers, Your

11:13AM Honor, yes. And they're like confusing me because I'd
2 like -- my questions are quite simple and --

3 THE COURT: She's allowed to explain. I'm going to
4 give a shot at re-iterating her answer. And her answer was
11:13AM no, but we can't -- basically, we can't reward it because
6 that's part of the behavior that we are treating.

7 MR. DEFRANCO: So, we'll punish it -- we'll punish it
8 by taking the Z Code after you do it?

9 THE COURT: I don't know. That's the next question, I
11:14AM guess.

11 BY MR. DEFRANCO:

12 Q. Let me ask you this then, Doctor: According to
13 Mr. Barr's declaration, again, in those time frames, I was
14 out of the hole for 44 days, he said they're reviewed
11:14AM annually, which is a year, 365 days if I'm correct; I was
16 out of the hole for 44 days and they took my Z Code.

17 THE COURT: Do you understand? Do you know the answer
18 to that question?

19 Q. That's my question to you.

11:14AM A. I don't know what goes into how long the duration.
21 All those things are security decisions as far as how
22 often --

23 THE COURT: You can ask someone else that question. I
24 understand your point. Ask her specifically psychiatric
11:15AM treatment questions that pertains to you. Whether or not

11:15AM they did something out of timeness -- unless you instituted
2 that, did you institute that?

3 THE WITNESS: No.

4 MR. DEFRANCO: Well, she was -- when we had our last --

11:15AM Q. Let me ask you this, Doctor: Do you have my
6 medical chart?

7 A. We have your medical chart. I reviewed it before
8 and also earlier today I reviewed it.

9 MR. DEFRANCO: Your Honor, can she read from that, her
11:15AM notes?

11 THE COURT: You don't have a copy of that? You're not
12 allowed to have a copy of your psychiatric chart.

13 THE WITNESS: Your Honor --

14 THE COURT: Hold on a second, that's interesting, hold
11:15AM on one second. Typically, the party has a copy of the
16 document; how do we deal with that?

17 MR. BAREFORD: Actually, might I suggest that he at
18 least ask the question in the event that she cannot answer
19 the question without referring to the medical file.

11:16AM THE COURT: He wants her to read a passage from her
21 chart.

22 MR. BAREFORD: If he can just sort of more specifically
23 identify what it is that he's attempting to accomplish here.

24 THE COURT: What is it you want her to read?

11:16AM MR. DEFRANCO: I would like to see if she was

11:16AM consistent in her notes about me being worried about the
2 possibility of me not saying these words to her, not that I
3 ever --

4 Q. And I'll ask the Doctor, did I ever tell you that
11:16AM I was going to hurt anybody?

6 A. Well, I believe, when I read through the notes, I
7 did indicate that -- that you had -- you felt or you
8 expressed to me that you felt like you are so frustrated, so
9 annoyed and irritated by having to cohabit with someone,
11:17AM that you felt it could result in a blowup or an explosive
11 temper that you could hurt the other individual in your
12 house -- in your room.

13 THE COURT: Here's where we're going with this: The
14 medical files are different, the psychiatric records in the
11:17AM DOC, as you know, are confidential and off limits to the
16 patient. The patient in this case is also the attorney, so
17 it's a difficult -- and the Court has no authority to change
18 the rules of the Department of Corrections.

19 Now, we could, if you -- I mean, we could have the
11:17AM Court look at the psychiatric record in camera, which means
21 on my own back in my chambers, but I don't have the
22 authority to let you look at that which you are not allowed
23 to look at under DOC regulations; are you following me?

24 MR. DEFRANCO: I'm following you, Your Honor.

11:18AM THE COURT: And is that an accurate portrayal of DOC

11:18AM regulations?

2 MR. BAREFORD: Yes, ma'am. And I think even perhaps
3 to -- if I might add to perhaps even help Mr. DeFranco out,
4 what he was just asking about actually is consistent with
11:18AM the statements that were included in the two letters that
6 Dr. Lindemuth had actually written on his behalf to the Z
7 Code committee.

8 So for purposes of the fact that she actually
9 memorialized it, actually does, in fact, demonstrate that he
11:18AM indicated that to her on at least the occasions prior to --

11 MR. DEFRANCO: I would object to that. It might be in
12 her interpretation of talking to me, but what did I
13 specifically assert in there.

14 THE COURT: Yes. That might be in her notes as well,
11:18AM that would be her interpretation as well. So if you want me
16 to look at those records, I will look at those records, but
17 I can't let you look at them.

18 MR. DEFRANCO: I would like you to look at the record.

19 THE COURT: All right.

11:19AM MR. DEFRANCO: I don't know, I can't approach the
21 witness.

22 THE COURT: That's all right, the courtroom deputy can.

23 BY MR. DEFRANCO:

24 Q. Doctor, does that accurately portray what you
11:19AM wrote?

11:19AM A. Yes.

2 THE COURT: What is that that has been handed?

3 MR. DEFRANCO: I've handed Dr. Lindemuth a report dated
4 August 20th, 2004.

11:19AM THE COURT: I have it in front of me. That's the
6 recommendation to the Z Code committee?

7 MR. DEFRANCO: That's the latest one.

8 Q. That's a recommendation, not a suggestion -- and
9 there's a difference, correct, Doctor? Is there a
11:20AM difference in the medical and the legal profession between a
11 suggestion and a recommendation?

12 A. Well, there's nothing that makes a rec -- a
13 recommendation is not a compulsory --

14 Q. It's directory.

11:20AM A. It's not -- it's a rec -- I don't know what you
16 mean. A suggestion -- if it was much more like a
17 suggestion, it would be like something that is absolutely
18 imperative, that is necessary.

19 Q. It would be adversary and directory. That would
11:20AM be the definition, I believe.

21 THE COURT: Do you understand your recommendation to be
22 a direct request or a direct order, or do you understand
23 your recommendation to be a suggestion?

24 Q. And do you know the difference?

11:21AM THE COURT: Well, which did you understand this to be,

11:21AM because it says recommendation?

2 THE WITNESS: Yeah. My recommendation is a
3 recommendation. Like I could have interchanged
4 recommendation to -- the word recommendation to suggestion.

11:21AM My suggestion is I didn't mean it to be an absolute.

6 THE COURT: Let me ask you this: Do you have the power
7 to direct that the committee take any action?

8 THE WITNESS: No. It's always been input. They can
9 take --

11:21AM THE COURT: That's what you've always said, but do you
11 have the power to direct them to do anything?

12 THE WITNESS: No.

13 BY MR. DEFRANCO:

14 Q. Does any doctor have the power to do that?

11:21AM A. I don't believe.

16 Q. Is there a doctor on that panel of Z Code
17 committee?

18 A. No.

19 Q. So none of them are medically qualified to make a
11:22AM determination whether a person should or should not be Z
21 Coded?

22 THE COURT: You can make that argument, but that's not
23 a question she can answer.

24 MR. DEFRANCO: Okay. I would suggest she --

11:22AM A. Well, that's the structure. Now, whether it's

11:22AM right or wrong, that's the structure of Z Code.

2 Q. Do you believe that's a dangerous structure,
3 Doctor?

4 A. Well, that's a personal opinion.

11:22AM Q. That's what I'm asking.

6 A. I can't -- that's --

7 MR. BAREFORD: He's actually asking for a hypothetical,
8 not entirely an --

9 THE COURT: I concur.

11:22AM MR. BAREFORD: -- and an opinion as to something that
11 is beyond what she can control because the Department of
12 Correction policy is what the policy is.

13 THE COURT: That's an objectionable question under the
14 Federal rules, so I'll sustain. I'm giving you a lot of
11:22AM leeway, but she's not here as an expert witness to give her
16 opinions on how the prison is run. I don't know that she
17 would be approved for that.

18 MR. DEFRANCO: My problem -- my whole problem is this,
19 Your Honor, I --

11:23AM THE COURT: You can make an argument. I understand
21 where you're going on this and I understand the argument
22 that you make. And I'm telling you it wouldn't matter if
23 she had that opinion or not, but you can still make the
24 argument and I will still take that as one side of that
11:23AM story that I have to decide. Are you following what I'm

11:23AM saying?

2 MR. DEFRANCO: Yes.

3 THE COURT: Her opinion would hold little weight on the
4 best way for a prison to run because she's not a prisoner

11:23AM specialist. Are you following what I'm saying?

6 MR. DEFRANCO: I'm following.

7 THE COURT: So under the rules of evidence, we don't
8 ask laypersons -- I mean, she's a physician, we don't ask
9 them questions that require expertise on another field that
11:23AM they're not experts in. She's an expert in psychiatry.

11 MR. DEFRANCO: See, I came from Western Penitentiary,
12 and down there the psychiatrists were the ones who decided
13 with the superintendents --

14 THE COURT: The Z Code.

11:24AM MR. DEFRANCO: Right. It was the program committee guy
16 who I have and deputies, and no --

17 THE COURT: But you have -- you've elicited the
18 testimony from this witness that there no were psychiatrists
19 on that committee.

11:24AM MR. DEFRANCO: Right. No doctors --

21 THE COURT: And so that's the important point and you
22 can make your argument at the closing, okay?

23 BY MR. DEFRANCO:

24 Q. What did that recommendation --

11:24AM MR. DEFRANCO: Let me just digress one minute, Your

11:24AM Honor. Isn't there a significant difference between the
2 words suggestion and recommendation?

3 THE COURT: You can make that argument, too. She
4 doesn't see one, her testimony was that it's the same. Was
11:24AM that your testimony?

6 THE WITNESS: Yes. I could have put suggestion instead
7 of the word recommendation in this case because it wasn't
8 like a compulsory intervention or a compulsory move that had
9 to be made, it was going to be a more optimal thing.

11:25AM MR. DEFRANCO: But that doesn't --

11 THE COURT: You can disagree with her about that, but
12 you can't argue with her on the stand. So she disagrees
13 with you, so let's move on. Do you want to speak with your
14 brother for a few minutes?

11:25AM MR. DEFRANCO: Yes.

16 THE COURT: I'll stay on the bench and we'll go off the
17 record.

18 (Brief recess taken.)

19 THE COURT: All right. We're ready to go back on. All
11:33AM right. We're back on the record, and we'll continue with
21 the examination of the witness. Mr. DeFranco.

22 MR. DEFRANCO: Thank you, Your Honor.

23 BY MR. DEFRANCO:

24 Q. Dr. Lindemuth, I take it on your direct
11:33AM examination a moment ago that your testimony was that you

11:33AM wrote this letter as a therapeutic --

2 A. Modality.

3 Q. -- intervention, I think you used.

4 A. Well, an intervention, yes.

11:33AM Q. And it would seem to me that would be manipulating
6 me.

7 A. No. The end result, as I said, is not up to me.

8 The end result is the decision of the Z Code committee. But
9 my valuation of your concern and my action of -- as you

11:34AM requested it, to give my input to the Z Code committee, that
11 in itself -- I don't know you if understand it in that form,
12 but that in itself is a form of supportive therapy.

13 Q. Did you believe that -- or what exactly is your
14 testimony because it's somewhat confusing to me?

11:34AM A. Okay.

16 Q. You said it was intervention -- did you believe
17 your report? Is your report accurate?

18 A. My report is very accurate.

19 Q. Do you stand by your report?

11:34AM A. Yes. But as I explained to you, the ultimate --

21 or the final decision rests on the Z Code committee. But

22 part -- but even though I had kind of -- I was skeptical as

23 it so happens that it wouldn't be accepted because I

24 realized that what I'd written in here fit the profile of so

11:35AM many other inmates.

11:35AM Q. Well, let me stop you there.

2 THE COURT: You can't, she's allowed to finish. Go
3 ahead.

4 A. Because it fits the profile of so many other
11:35AM inmates, this wasn't distinctive or was nothing unusual or
6 atypical.

7 So -- but -- and I knew that it likely was not
8 going to result in a positive outcome for you, but at least
9 by my action of accepting your request, accepting the
11:35AM distress that you were experiencing, understanding it, and
11 validating it, and going with your request of conveying my
12 input to the Z Code committee, which all of this is true,
13 right, was in itself a therapeutic modality.

14 Now, you may not have understood, but the
11:36AM psychiatric term, that conduct of mine, is rendered to be a
16 therapeutic modality.

17 THE COURT: I have a question: Would you have agreed
18 to write that recommendation if you had known that it would
19 be used as a basis for a motion to have a Federal judge sign
11:36AM an order to require Z Code status?

21 THE WITNESS: No. Because, again, this was -- this
22 would apply to so many that if it was -- if it would apply
23 to Mr. DeFranco, there would be dozens of others and that
24 was not practical to accommodate everyone in an ideal,
11:37AM optimal condition in a prison setting.

11:37AM THE COURT: If you were not asked by Mr. DeFranco to
2 write the recommendation, how do you give a recommendation
3 to the Z Code committee when it meets?

4 THE WITNESS: I don't give -- basically, I don't
11:37AM give -- it's not required that I give any recommendation to
6 Z Code committee. Z Code committee is independent.

7 THE COURT: And they don't ask you for your opinions
8 on --

9 THE WITNESS: No, because their mental health criteria
11:37AM or mental health state is not -- or no longer -- or I don't
11 know if it was or not, it's not a criteria.

12 THE COURT: For Z Code status.

13 THE WITNESS: In fact, I know that homosexuality is,
14 but I don't know what other --

11:38AM THE COURT: Mental health status is not a criteria for
16 Z Code status.

17 THE WITNESS: That's how it has been at our facility.
18 BY MR. DEFRANCO:

19 Q. Let me ask you this: You say -- now, you claim
11:38AM that my situation meets a dozen or so other inmates,
21 however, out of those dozen or so other inmates that you're
22 referring to, how many are convicted of beating a person to
23 death? That's what I'm convicted of; how many are convicted
24 of beating a person to death without a weapon? How many of
11:38AM them had a Z Code that was lifted a month after they come

11:39AM out of the hole? Tell me how I fit in that dozen inmates
2 that you're referring to.

3 A. I mean, there are many that I see that have been
4 convicted of a homicide. There are -- there are just a
11:39AM number of individuals that have been convicted of homicide.
6 They're also very aggressive within the prison system.
7 They're in and out of RHU for assaulting another inmate or
8 assaulting a staff member.

9 But, again, these individuals are not granted a Z
11:39AM Code status and you can understand why. Because even if you
11 just took -- even if it was a matter of assaulting someone
12 and that would give you a Z Code status, then, well, since
13 everyone wants a Z Code status, there would be so many that
14 would, you know, engage in such a conduct, aggressive
11:40AM conduct, so that then they would qualify for Z Code. That's
16 why --

17 Q. I was already Z Coded. I was already Z Coded. I
18 wasn't trying to get a Z Code --

19 A. Okay. Right.

11:40AM THE COURT: Is there a question?

21 Q. Yes. I was already Z Coded, and how does --

22 THE COURT: Were you Z Coded at this facility?

23 MR. DEFRANCO: Yes, I was Z Coded at this facility.

24 THE COURT: Are any of the patients that you have, the
11:40AM dozen or so that have similar behavior patterns to the

11:40AM Plaintiff, were they Z Coded previously at this facility?

2 Q. And have it taken away after they threaten an
3 officer?

4 A. They -- well, again, it would be best to put this
11:41AM question to -- be addressed by the unit managers and unit
6 officers and counselors because the misconduct system and
7 who has assaulted who is really not something that I'm well
8 versed in. I just get it primarily --

9 Q. You just testified --

11:41AM A. Yes, I do, but --

11 Q. -- that the dozen or so other inmates --

12 A. Yes.

13 Q. -- that have similar mental situations as
14 myself --

11:41AM A. Yes.

16 Q. -- let me finish my question, that have similar
17 mental health problems and heart conditions, out of those is
18 what I'm asking you, who have you seen that were Z Coded,
19 subsequently threatened the life of a prison guard, and had

11:41AM that Z Code removed 44 days after they were released from
21 the hole?

22 THE COURT: Anyone, yes or no? Do you know of anyone?

23 A. I'm not aware of anyone, but I never researched
24 that either.

11:42AM Q. Of your patients, the people you see -- the 12

11:42AM people that you see that you're testifying to that meet my
2 criteria, don't meet my criteria; do they?

3 A. Well --

4 Q. They don't meet my criteria?

11:42AM MR. BAREFORD: Ma'am, I think he's already asked the
6 question and she's already answered it.

7 THE COURT: She's already answered that she doesn't
8 know of any, it's over, move on.

9 MR. DEFRANCO: Okay. So then my situation basically
11:42AM sticks out then.

11 THE COURT: Well, you can make that argument after
12 questioning. You can illicit information while someone is
13 on the stand.

14 MR. DEFRANCO: Your Honor, I have a psychological
11:42AM report that I'm supposedly not even allowed to have but I
16 was given it by my attorney back in 1986. The pertinent
17 parts are highlighted on Page No. 2.

18 MR. BAREFORD: That was previously included in one of
19 the filings.

11:43AM THE COURT: Do I have it?

21 MR. DEFRANCO: I would have sent it to you, Your Honor.
22 I don't know if it's in the preliminary injunction.

23 MR. BAREFORD: I believe it was one of the first ones
24 that was filed that this was brought up.

11:43AM BY MR. DEFRANCO:

11:43AM Q. Once the Court finds that, I would like you to
2 read it out loud.

3 MR. BAREFORD: Ma'am, if I --

4 THE COURT: I have it. I have it. In the first
11:44AM paragraph it references March 1, 1986.

6 MR. DEFRANCO: Yes. The second page is the pertinent
7 part of it. I have it highlighted for the Doctor. If it's
8 okay with the Court, I ask that she read that and if she
9 agrees with it.

11:44AM Q. Would you read it out loud.

11 A. Yes. "The personality tests suggest that the
12 client is a very unstable young man and that he was --
13 appeared to be much more prone to overreact and in many
14 cases tends to be easily inundated by his stressing
11:44AM feelings. Can sometimes become confused at the press of the
16 feelings. Findings suggest that he is hypersensitive, that
17 such touchiness can sometimes border on the paranoidal,
18 which is to say that the client can misconstrue and
19 misinterpret events because of his quote, touchiness.

11:44AM The client, under these circumstances, is usually
21 convinced that his interpretations is a valid one. This is
22 not meant to imply that the allegation he made in reference
23 to his parole officer is a fabrication, but simply that the
24 client is capable of misconstruing events quite seriously.

11:45AM Other findings suggest that the client is a

11:45AM gregarious individual, one who lies to socialize despite the
2 type of sensitivities, one who would appear to be quite
3 close to the parent figures, especially the mother figure,
4 and one who would appear to have a strong sexual drive and
11:45AM sexual interests; yet one who harbors at hidden levels some
6 basic misgivings regarding his own adequacy as a male.

7 The findings suggest that he is an affiliative
8 person in that he likes to be liked and approved by others,
9 one who is capable of responding in kind, yet one whose
11:46AM instability and suspiciousness quite likely lead to a lot of
11 the erratic in his behavior with the consequences people who
12 know him, may know -- not know what to expect from him from
13 one minute to the next.

14 And in this context, the client does appear to
11:46AM harbor some pretty intense hostile aggressions and impulses
16 which usually are reasonably well-controlled. But findings
17 suggest that he does have a potential for explosivity, even
18 to the point where he could injure someone.

19 The diagnosis is as follows: Mixed personality
11:46AM disorder with features of the borderline paranoid. The
21 client should be referred for a psychiatric exam with a
22 possible prescription of a medical regimen to ameliorate his
23 instability, which is exacerbated by the presenting
24 situation. Additionally, the client is an individual in
11:46AM need of psychotherapy, even though prognosis was a limited

11:46AM improvement, such vehicle would be poor by virtue of his
2 personality makeup."

3 THE COURT: What's your opinion on that, Doctor?

4 THE WITNESS: This is -- I think this is a wonderful
11:47AM description. Primarily, it indicates that he has --

6 A. Yes -- as I explained to you before, you have a
7 personality disorder that has a propensity of being
8 aggressive, being unpredictable, and being explosive.

9 That's nothing -- that doesn't come as a surprise, right?

11:47AM And basically this re-iterates that kind of character trait
11 in his report.

12 So, yes, I agree with this 100 percent. But the
13 thing is that if we were to -- if we were to look at the
14 incarcerated population, 80 percent would fulfil these

11:48AM criteria. One of the reasons that they're incarcerated is
16 because they're impulsive --

17 Q. I haven't asked you a question.

18 A. Yes. I agree fully with this report.

19 Q. All right. My question is this: Does your
11:48AM report -- is your report consistent -- the one that you now
21 claim to be a therapeutic intervention based to appease me,
22 is consistent with that report?

23 MR. BAREFORD: Ma'am, I'm going to object --

24 THE COURT: You're going to object to his description
11:48AM of her report?

11:48AM MR. BAREFORD: Precisely.

2 THE COURT: Sustained. Is your report consistent with
3 this opinion? Is your recommendation consistent with this
4 opinion?

11:48AM THE WITNESS: Yes, because I --

6 MR. DEFRANCO: Your Honor --

7 THE COURT: Let her answer.

8 THE WITNESS: -- I express -- if you look, it expresses
9 his unsocial traits. As it says in this one, too, are

11:48AM affected by his prominent volatile, aggressive, and physical
11 aggression, volatile violence, including murder --

12 BY MR. DEFRANCO:

13 Q. Excuse me, this is what you wrote? This is your
14 report, correct?

11:49AM A. This is -- right.

16 Q. I wanted it for the record. What date was your
17 report written?

18 A. Well, there's August 20, 2004.

19 Q. 2004, this past August, you wrote that?

11:49AM A. Yes.

21 Q. When was that written?

22 A. This?

23 Q. Yes.

24 A. '86.

11:49AM Q. Okay. So --

11:49AM THE COURT: But she says her report is consistent with
2 the doctor -- that her recommendation is consistent with the
3 doctor.

4 Q. Are you familiar with a Dr. Paul Mueller
11:49AM (phonetic)?

6 A. Paul Mueller?

7 Q. If I'm pronouncing it wrong, I apologize.

8 A. How familiar am I?

9 Q. Who is he?

11:50AM A. He is the, I guess, clinical director, or -- yeah,
11 for psychiatric services for the company -- the managed care
12 organization, which I'm employed by.

13 Q. He's a psychiatrist, is what I'm getting at?

14 A. Yes.

11:50AM Q. Is he the head psychiatrist or what's his --

16 A. Well, he's not -- he's not more qualified or less
17 qualified. He's a psychiatrist and he happened to have an
18 administrative position, also.

19 Q. Okay.

11:50AM A. Of being the -- you know, the director for the
21 western region of Pennsylvania.

22 Q. So he basically oversees the DOC and inmates being
23 seen by psychiatrists in the western district of
24 Pennsylvania, correct?

11:50AM A. Well, I guess you could say that; but really what

11:50AM his task is, is to guide and if there's a problem --

2 Q. Same thing?

3 A. Yeah.

4 Q. Let me ask you this: The Judge allowed me to read
11:51AM this into the record during our October 22nd hearing that
6 Ms. Sue Evans couldn't read, that I was able to read, and in
7 his report he stated he had seen me for about an hour. And
8 he said -- and if I'm wrong, I believe you'd remember it,
9 that I'm impulsive, aggressive, anti-social, and named a
11:51AM bunch of medications that I've been on.

11 A. Uh-huh.

12 Q. And then it said "double celled", the words
13 "double celled", it just said, double celled.

14 A. Correct, I remember.

11:51AM Q. It didn't go on to say that -- the double celled
16 was in line all by itself and at the time I was double
17 celled; and why would that be there under a doctor --

18 MR. BAREFORD: I'm going to object to this line of
19 questioning just because -- what's really relevant here,
11:52AM especially in light of what Dr. Lindemuth is actually
21 testifying about, is what was basically her reasoning and
22 her justification for writing the two documents --

23 THE COURT: Sustained. She can't testify, Mr.
24 DeFranco, to what somebody else wrote and why because she's
11:52AM not that person.

11:52AM MR. DEFRANCO: Am I allowed to ask -- it came in
2 through the evidentiary hearing, am I allowed to ask her
3 knowledge of it, if she's aware of it?

4 THE COURT: You can ask if she's aware of that report.

11:52AM BY MR. DEFRANCO:

6 Q. Are you aware of that report?

7 A. I am.

8 MR. DEFRANCO: Am I allowed to ask her if that's
9 consistent with her report, Your Honor?

11:52AM THE COURT: Yes.

11 Q. Is what he wrote consistent with what you wrote in
12 those other reports?

13 THE COURT: To the best of her recollection.

14 Q. To the best of your recollection.

11:52AM A. Yes. He indicated the same character traits.

16 Q. Which were; can you name them.

17 A. Impulsivity, a volatility, unpredictability.

18 Again, consistent with the psychologist here and within what
19 the anti-social personality disorder is about. These are

11:53AM just criteria, you know, for that character disorder, which
21 Dr. Pazad (phonetic) concluded what was troubling you and I
22 think -- and also Dr. Paul Mueller.

23 We all agreed that primarily your behavior is a
24 manifestation or is a function of your anti-social character
11:53AM disorder.

11:53AM Q. Okay. I want to hand you now, if I could, a
2 report. This is your September 2002 report.

3 A. Okay.

4 Q. About a month after my Z Code was taken or two
11:54AM months.

6 MR. DEFRANCO: I believe that's also part of the
7 preliminary injunction, Your Honor.

8 THE COURT: All right.

9 Q. Is that your report, Doctor?

11:54AM A. Correct.

11 Q. Is it your testimony that you then -- when you
12 gave that report, that was also a therapeutic intervention
13 to appease me, or was that a diagnosis? Are these
14 diagnoses -- by the way, are they diagnoses?

11:54AM A. This is a description of your behavior, okay.
16 This is --

17 THE COURT: By that you mean no then, this is not a
18 diagnosis. Are these -- is this a diagnosis?

19 THE WITNESS: The diagnosis that I have here?

11:54AM Q. Both of the reports, are they diagnoses?

21 A. Well, a diagnosis is like panic disorder or
22 generalized anxiety, that's a diagnosis.

23 THE COURT: So is that a yes or no that it's a
24 diagnosis?

11:55AM A. Yeah. You could consider -- because I am

11:55AM mentioning here what disorder I'm treating you for.

2 Q. Because the attorney here in his objections said
3 that they were not diagnoses --

4 A. Well --

11:55AM Q. -- to Judge Cohill --

6 THE COURT: She just answered the question.

7 MR. DEFRANCO: I'm just letting you --

8 THE COURT: You can beat the horse to death.

9 Q. Dr. Lindemuth, I've got a question: Based on what
11:55AM you know, based on our meetings due to my health and my
11 mental health, do you think I should be single celled or
12 double celled? Do you go with your report that you wrote or
13 do you now retreat off of it that would be for the Federal
14 Court?

11:56AM THE COURT: Is the question, do you agree with your
16 recommendation, or is the question do you think I should be
17 single celled or double celled?

18 MR. DEFRANCO: Right, both.

19 THE COURT: No, they're two different things. She
11:56AM explained that that was two different things, so we have to
21 take her testimony under oath. Which is your question?

22 Q. My question is: Do you believe that I should be
23 in a single cell or a double cell?

24 THE COURT: That's the question.

11:56AM A. Well, that's a difficult -- ideally, optimally --

11:56AM Q. Would you want to be my cellmate?

2 THE COURT: Let her answer the question.

3 A. Ideally, anyone of your profile would be better
4 off -- see, my problem is that, yeah, we can talk in ideal
11:57AM and optimal terms, but how is that possible? We --

6 Q. I'm in a single cell now, it's very possible.

7 A. Okay. But what I'm saying is that anyone that
8 represents this profile would be better off in a single
9 cell. I mean, that is a no-brainer.

11:57AM THE COURT: And my question is: Would he be more
11 appropriate for a single cell than your other patients?

12 A. No. I have individuals that are of -- have the
13 same history, the same presentation, except that they
14 don't -- even though they do begrudge the fact that are
11:57AM in -- that they are cohabiting, they just never have made
16 that sole, prominent in their sessions that we have and
17 never requested that I intervene.

18 So I do not do it voluntarily. This was, again --
19 there was a persistence. Every time you met with me,
11:58AM primarily the focus of the interaction was how -- how this
21 cohabitation with another inmate is distressing you. That
22 was the focus of it. So in order to surpass that -- you
23 couldn't move beyond anything, so I said, okay, I know
24 that -- I knew, and I think I expressed to you, that mental
11:58AM health criteria are not given that much weight or any

11:58AM weight -- I don't think, given hardly any weight anymore
2 because of the space problems, you know, the overcrowding.

3 Q. Right.

4 A. So I think I expressed to you that that would
11:59AM likely not be given much consideration, my input, because of
6 that fact. But I did it, I wrote this memo because then you
7 can move beyond because it would be an ongoing thing, every
8 time we met, the focus would be this.

9 Q. The thing was this, right Doctor, and tell me if
11:59AM I'm mistaken, I was worried about transfer for how long,
11 that the Defendants were going to retaliate and transfer me;
12 was that made known to you at the many, many times I saw
13 you, was that a concern of mine?

14 THE COURT: Was he concerned about a transfer to
11:59AM another institution?

16 A. Yes, we were.

17 Q. If I pursued the Z Code, correct?

18 A. What was that?

19 Q. If I pursued the Z Code.

11:59AM A. If you pursued the Z Code.

21 Q. Kept it up.

22 A. Yeah. You mentioned something like that.

23 Q. That there were threats of me being transferred,
24 correct?

12:00AM A. Okay. Well, that, I did not witness anything.

12:00PM Q. That's what I told you, correct?

2 A. Yes, you told me that.

3 Q. And I told you that they were basically, in my
4 view, holding me double celled and if I acted out on a

12:00PM cellmate that I'd be transferred, that would give them the
6 reason to transfer me.

7 A. Well, that's how you perceived it.

8 Q. If I got caught harming a cellmate, I would be
9 moved from my family.

12:00PM THE COURT: Sir, what is your question?

11 Q. My question is --

12 THE COURT: Did you say that her?

13 Q. Did I say that to you?

14 A. Yes. And, you know, that was your interpretation

12:00PM and I can't -- I don't know what events happened because I
16 was never in any of those meetings. Again, if we're going
17 to --

18 THE COURT: No, that's -- we don't need to go over
19 that.

12:01PM A. The paranoid ideation that's defined could also
21 apply in how you -- what you felt about what was going on,
22 too. So I was not there, I can't --

23 Q. I didn't ask you that. I asked you only what
24 pertained between me and you.

12:01PM A. Verbally, yes, you told me that statement. Yes.

12:01PM Q. Right. And my concern was, as I told you this, my
2 mother's bad health.

3 A. Right, I remember.

4 Q. They would have to travel far away, and that it
12:01PM was basically holding me back -- in my view, the DOC was
6 using that over my head that if you act out, you're going
7 far away from them.

8 A. Okay. Now, again, that's what you expressed to
9 me.

12:01PM Q. That's all I'm asking. How many times?

11 A. You told me that. Whether that took place or --

12 THE COURT: He's not asking you that.

13 A. You did tell me that.

14 Q. How many times?

12:02PM A. You told me more than once, yes.

16 Q. Was it a worry of mine, was it a concern of mine?

17 A. Yes. It was a concern of yours because your
18 family is in the Erie area and you were concerned if you
19 were to be moved you wouldn't have the contact with your
12:02PM family as much.

21 Q. And I told you, although you did not hear it from
22 anybody else, that I was threatened with being transferred.

23 A. You did say that, yes.

24 Q. I told you that in a consult, right?

12:02PM A. Yes.

12:02PM Q. Then, I'm going to wrap up this with this, Your
2 Honor: Can you please point out, because I notice in your
3 affidavit, I believe, Paragraph 6, that I manipulated your
4 letter. Can you show me where I changed your letter of
12:03PM recommendation for Z Code.

6 What part of your recommendation -- two and a half
7 months ago I'm talking, two and a half months before I had a
8 hearing before the Honorable Judge Baxter, you had written a
9 report, a recommendation, that I become a Z Code. You were
12:03PM worried about my explosivity, you were worried about my
11 heart, you said --

12 THE COURT: That document stands for itself, let's not
13 get into it again. So in Paragraph 6, you say -- and I'm
14 reading, "I feel that he has misused my letter and has
12:03PM manipulated his way into single-cell status." In what way
16 has he manipulated your letter, he's asking.

17 Q. Did I change it?

18 A. It was addressed to the Z Code committee. I
19 didn't expect that it was going to be applied in any other
12:04PM fashion. And, you know, I felt that it was -- it was going
21 around the policy and around the auspices of what the
22 structure and procedures of the institution are, so that is
23 what this statement is referring to.

24 Q. So I manipulated your letter --

12:04PM THE COURT: Well, you don't argue with her, that's her

12:04PM explanation. And then you take it and you argue with me in
2 an argument.

3 MR. DEFRANCO: I don't want to argue with you.

4 THE COURT: Well, make your argument to me. But you
12:04PM don't argue with her about her answer, her answer is what it
6 is, it's under oath; do you understand?

7 MR. DEFRANCO: Okay.

8 Q. And I'm just going to wrap this up. And so in
9 your medical -- or you're an expert, you're a forensic
12:04PM psychiatrist, and I'm not going to dictate the law to you
11 because you're not a lawyer, and it was your testimony that
12 the DOC, under press for space and money, but
13 notwithstanding that, let's say they had all the money in
14 the world, right, would you say I should be in a single
12:05PM cell? Or would you be concerned about me harming a cell
16 mate? Are you --

17 THE COURT: Which question?

18 Q. Are you worried about me harming a cellmate; is
19 that a concern of yours?

12:05PM A. It was a concern that I have with many
21 individuals, and you were also one of those individuals
22 that, yes, because what's the best predictor of future
23 violence, past violence, right?

24 Q. I'm asking you to stick with me.

12:05PM A. Anyone has --

12:05PM Q. We're talking about me.

2 A. You, yes.

3 Q. We're talking about me.

4 THE COURT: Her answer is yes. Quickly, next question.

12:05PM Q. So in your medical opinion, should I be in a
6 single cell due to my --

7 THE COURT: Should he be in a single cell if there
8 enough cells for everyone that needed to have a single cell
9 to have one; is that your question?

12:06PM MR. DEFRANCO: Basically.

11 THE COURT: If money were not an object.

12 THE WITNESS: Well, I think naturally everyone would
13 agree with that.

14 THE COURT: Do you agree that you would recommend that
12:06PM he be in a single cell.

16 THE WITNESS: Yes, that would be optimal, yes.

17 A. No only for you, but --

18 Q. I'm just asking about me.

19 A. Yes, yes. I think it goes without saying that
12:06PM that would be ideal.

21 MR. DEFRANCO: Your Honor, that's all.

22 THE COURT: We'll begin cross-examination after I hold
23 this hearing. So I'm going to -- we're going to adjourn for
24 a moment, but you're still under oath and I'm going to ask

12:06PM you not to speak to anyone about your testimony outside

12:06PM until my hearing is finished. And I'm going to ask you
2 all -- is this under seal?

3 MS. WALLEN: Yes.

4 THE COURT: This is under seal, so everybody has to
12:06PM wait outside.

6 (Recess taken from 12:07 p.m. to 12:22 p.m.)

7 THE COURT: So you have finished your direct
8 examination, you will have redirect. And your brother has
9 to go back to that seat. Cross-examination -- this is
12:22PM cross-examination by Mr. Bareford.

11

12 CROSS-EXAMINATION

13 BY MR. BAREFORD:

14

12:22PM Q. Doctor, would you have written those two
16 letters -- and by those two letters, I mean the letter of
17 recommendation from September of 2002 and the letter of
18 recommendation from August of 2004, would you have written
19 those two letters had Mr. DeFranco not insisted that you
12:23PM write those letters?

21 A. No. I don't voluntarily write letters like that
22 because I would be doing letter writing for whatever job
23 changes or unit changes or single -- it's just so -- that's
24 not my task. My task is to diagnosis and treat psychiatric
12:23PM illness.

12:23PM And in his case, if that ended up being the
2 stumbling block to ongoing treatment because of this, this,
3 this, was always that, that, and recommending that I do it,
4 I did do it, but it's very, very unusual. It's only when
12:23PM the inmate persists, and this has been, I think -- I think
6 there was just one other one in the past that was as
7 persistent, but that didn't go anywhere -- but no. The
8 bottom line is, no, I don't voluntarily write to the Z Code
9 committee on my own unless it's in a case like Mr. DeFranco,
12:24PM who was persistent in, you know, asking me to convey input.

11 Q. Could you just describe for the Judge how
12 persistent he was to get you to write those letters of
13 recommendation.

14 A. Well, in looking over my notes, that became a
12:25PM focus in virtually every interaction we had, which must have
16 been at least 20 or so interactions or more since I first
17 met with him. The majority -- in those, the majority of the
18 session was really spent on how begrudged he was after --
19 that was after he lost his Z Code, how begrudged he was that
12:25PM now he had to cohabit with someone else. And that was
21 understandable, yes, but we couldn't get beyond that and
22 that was the focus.

23 Again I, as a therapeutic modality, did come up
24 with this memo and thinking and anticipating that it was
12:26PM just going to result in the same -- the same result that

12:26PM happened with the couple or three others that I had done in
2 the past. And that because I knew that mental health
3 criteria weren't going to be considered and the fact that
4 this profile that Mr. DeFranco has is very similar to the
12:26PM vast majority of the inmates that are housed in our prison.

6 Q. Some of the descriptions of Mr. DeFranco that you
7 included in your letters -- more specifically I'm talking
8 about the bitterness and resentment, frustration, tolerance
9 reaching its limits, that kind of stuff.

12:27PM A. Correct.

11 Q. I'm going to ask you a question about that: Did
12 Mr. DeFranco describe that to you and want that to be
13 contained in his letter?

14 A. Well, yeah. Because psychiatry is like the --

12:27PM THE COURT: Actually, did he specifically tell you to
16 put that in his letter?

17 THE WITNESS: He described having these symptoms to me
18 and asked me to -- if I could do this memo with a
19 description. He didn't dictate, no. He didn't dictate the

12:27PM letter, but he gave me the material. Like he presented to
21 me the material that he wanted included in a memo so that it
22 had some -- it had a little bit of both.

23 I mean, obviously, why would I write a memo if
24 there was nothing pertinent to say. So, yeah, he asked me
12:28PM that I would put in there all of the symptoms -- and you

12:28PM see, he may not have described it in that exact terminology.
2 I'm just putting in more professional terminology. He may
3 have used words like, I'm going to snap out, I'm so angry,
4 I'm mad, I can't tolerate. So this kind of wording, I put
12:28PM in more professional terms to be, you know, a more
6 sophisticated memo.

7 Q. Let me ask it a little bit more precisely: In
8 asking you to write the recommendations to the Z Code
9 committee, did he describe his own feelings to you for you
12:29PM to include that in the letter even though he did not
11 specifically write the letter, nor did he specifically use
12 the exact language that was in your letter; is that a fair
13 way to character what you're explaining?

14 A. Yes.

12:29PM Q. And what other kind of treatment have you been
16 giving to Mr. DeFranco in the last two years?

17 A. Well, we couldn't -- again, it's because of this
18 issue, we have to use a supportive therapy. As per Dr.
19 Pazad, psychotherapy in anti-social character disorder is
12:29PM not much benefit.

21 Primarily, we try to attenuate -- attenuate, not
22 limiting, but attenuate the extremes of lability by
23 chronological measures. But as far as therapy goes,
24 sometimes some supportive group therapy can be of modest
12:30PM benefit, but nothing that would be so robust as to make a

12:30PM marked change in their underlying personality or behavior.

2 Q. And September of 2002, on or about that time
3 frame, after you wrote the first letter of recommendation,
4 did he continue to come see you for therapy?

12:30PM A. Well, he came to see me for follow up of his
6 psychotropic treatment. And my task there is primarily to
7 follow up on the pharmacology treatment -- yeah, I tried to
8 fit in a little bit of discussion and talk therapy, but that
9 isn't really primarily what I'm wanted there for.

12:31PM The psychology department is really assigned that
11 aspect of the mental health treatment. I'm primarily to do
12 the diagnosis, the evaluation -- the psychiatric evaluation,
13 the diagnosis, and the pharmacologic treatment because I'm
14 given only 15 minutes -- after the first evaluation, I'm

12:31PM given only 15 minutes per patient, per follow up. So how
16 can you -- you can't really conduct an effective therapeutic
17 session. And with what limited means I have, I will do
18 some, but can't really call my -- you know, my self as a
19 psychotherapist in this setting.

12:32PM Q. And you've made some -- I hope I'm not going to
21 butcher this word, but you were just describing
22 pharmacological --

23 A. Medication treatment.

24 Q. Could you just explain that; if you could.

12:32PM A. Well, like, for instance, the symptomatology that

12:32PM one would present, for instance, a generalized anxiety
2 disorder, if that is what I conclude the person is
3 exhibiting then I would apply a medication to treat this
4 condition. And after a month on the medication, usually
12:32PM then I follow them up to see if the symptoms have responded
6 to the medication, if an adjustment is to be made, if the
7 person tolerates the medication, if an alternate regimen is
8 needed, that kind of thing.

9 Q. And what kind of medication is Mr. DeFranco on?

12:33PM A. He's on Valium because he had been on -- he had
11 been tried on alternative medications like -- you know,
12 which are noncontrolled medications, which are meant like to
13 be preventative like Prozac, or Zoloft, or Paxil. So that's
14 a -- and he either did not respond to those medications or
12:33PM could not tolerate those medications.

16 Q. Let me ask you this: You were not the one that
17 put him on those medications though, right?

18 A. No, I was not. That was what was noted in the
19 history and, therefore, I proceeded to go with the then
12:34PM anti -- he did not have a substance abuse history, so it
21 wasn't like it was contraindicated. And it was in a
22 controlled environment, he has a life sentence, so it's not
23 like he's going to go out there and have a substance
24 dependence that was introduced in the prison setting.

12:34PM Q. So you put him on Valium.

12:34PM A. I put him on Valium, yes.

2 Q. When did you do that?

3 A. I believe it was shortly either the first -- after
4 my first evaluation with him, I believe.

12:34PM Q. Was that on or about the springtime of 2001?

6 A. Yeah.

7 Q. Was he in a Z Code status in 2001?

8 A. Yeah, because the Z Code problem didn't begin
9 until later. I don't remember when he lost his Z Code. I
12:35PM don't -- was it 2002?

11 Q. The actual date is probably more precise. You
12 started to see him early in 2001 -- the first half of 2001.

13 A. Yes.

14 Q. And it's on or about that same time period that
12:35PM you put him on the Valium.

16 A. Yes, because he presented symptoms consistent with
17 panic disorder and generalized anxiety disorder. You've got
18 to understand that much -- in psychiatry we depend a lot on
19 history. We depend a lot on people's subjective perception

12:35PM of what's happening to them. He described he was having the
21 shortness of -- he had episodes where he's been --

22 experiencing an overwhelming fear, he had shortness of
23 breath, heart palpitations, chest tightness, tingling,
24 sweating, and, you know, stomach, et cetera.

12:36PM So -- and he was describing these symptoms that

12:36PM would take -- that would climax in 10 minutes and would
2 occur like once or twice a week. And the fact that he ended
3 up in the emergency room in the past because he almost felt
4 like he was experiencing a heart attack, that is a classic
12:36PM history of a panic disorder, panic attacks. So I took that
6 as being, you know, accurate since.

7 And unless you actually witness, are actually
8 there at the time, you take the history as being what is
9 happening to the individual. Could he have made all those
12:36PM things up, read a book perhaps, so I'm not going to practice
11 in assuming that everyone is conning me. I couldn't work in
12 that. I can rule it out, you know, but I'm not going to
13 take that and assume it when it sounds sincere.

14 So, yeah, the diagnosis comes primarily from the
12:37PM presentation, the history, his account of events that took
16 place, so, yes, that's psychiatry --

17 Q. So -- I'm sorry, go ahead.

18 A. It's not like radiology or pathology where you see
19 a tissue specimen, it's not like concrete where you see a
12:37PM radiological image and say, okay, this is a fact. It's not
21 like that, it's very abstract. So you depend a lot on the
22 subjective information.

23 Q. And that was this baseline upon which -- and if my
24 question doesn't make sense, let me know; but was that the
12:38PM baseline on which your entire relationship with the times

12:38PM you would interact with Mr. DeFranco, did that form his
2 subjective reports to you, as well as the history that was
3 contained in his medical or psychological folder?

4 A. Yeah. That was, and, you know, his description --
12:38PM yes, and it's consistent with my notes, yeah.

6 Q. And he went into the restricted housing unit in
7 the first half of 2002, and he asked you some questions
8 about that. I'm going to ask you some questions about that.

9 Mr. DeFranco asked you earlier as far as whether
12:38PM or not someone who had threatened a staff member, if that's
11 something you would deem to be important with respect to
12 making a recommendation for a single cell; do you remember
13 that question?

14 A. No. I'm -- see --

12:39PM Q. And that wasn't -- well, basically, I'm going to
16 ask a question in light of his question he asked you on
17 direct.

18 A. Okay.

19 Q. First of all, how much do you know about that
12:39PM incident that landed -- that was the situation involving
21 that misconduct before?

22 A. See, I don't know the particulars of the incident.

23 Q. Okay.

24 A. But the point is he had conducted himself in a
12:39PM manner that was grounds for RHU placement. I can't tell you

12:39PM the particulars because --

2 Q. Did you see his conduct report of that incident?

3 A. I don't recall that I did.

4 Q. So did you hear about that incident from anyone

12:40PM other than Mr. DeFranco?

6 A. Well, only Mr. DeFranco because I'm not involved
7 in the security interworkings. I'm -- you know, it's not so
8 much relevant to my practice that -- you know, so many of
9 the patients go in and out of RHU. The point is that

12:40PM something significant happened that was grounds for --
11 whether it was some type of assaultive, sometimes foul
12 language, but they violate the rules in some form.

13 Q. Whenever Mr. DeFranco, if you can remember -- and
14 if you can't remember, obviously, that's what the answer is,

12:40PM but did he ever explain to you whenever he was discussing
16 this incident that he jokes around with that sergeant in
17 that manner from time to time, or that he always jokes
18 around in that manner with that officer, who was the subject
19 of the threat, and another officer knows that he was joking
12:41PM around and may have routinely joked around; did he ever

21 describe that misconduct -- let me rephrase the question:
22 Did he ever describe his role in that misconduct as simply
23 joking around with someone else and that's the reason he got
24 punished with you?

12:41PM A. No. That's the first I've heard of the joking.

12:41PM Q. When he was asking -- or, I'm sorry, let me
2 rephrase the question: When he would come in and express
3 concerns about being transferred, I'm going to ask you some
4 questions about that, did he ever explain to you that he
12:41PM could have been transferred in 2003 and yet, but for the
6 intervention of the staff at the prison, he was not? Did
7 you know that he was -- let me rephrase the question: Did
8 you know that he was due to be moved in the summer of --
9 actually, it was 2002, I misspoke when I said 2003; did you
12:42PM know that he was due to be moved in the summer of 2002 and
11 yet the staff allowed him to stay because his family had
12 requested that he be allowed to stay at Albion?

13 So my question is: Did he ever explain that
14 context to you when he was talking about his anxiety of
12:42PM being transferred?

16 A. I don't recall. I don't recall the details. He
17 might have mentioned to me that -- I --

18 MR. DEFRANCO: Objection, Your Honor. If she doesn't
19 know, she doesn't know.

12:42PM A. No, I don't. I don't recall -- it doesn't ring a
21 bell.

22 THE COURT: All right.

23 Q. Do you remember -- I'm going to hit you with a
24 date, the precise date is not that important, tell me
12:43PM whether or not you recall this though, June 30, 2003, he

12:43PM expressed a concern that -- or made some kind of comment to
2 the effect of he was wondering what he could do to meet the
3 other criteria of the Z Code committee; do you recall that?

4 A. Yes. He did inquire about how he would qualify
12:43PM for Z Code. And --

6 Q. And -- I'm sorry.

7 A. And I said to him, well, you know there has to be
8 somewhere where there's a set of criteria. All I know is
9 that I'm not part of the Z Code committee, I know mental
12:43PM health criteria was removed. And so whoever -- I referred
11 him to the counselor and the unit manager to indicate -- or
12 whoever knew what the requirements are other than
13 homosexuality.

14 Q. In your September -- I'm sorry August of 2004
12:44PM letter, the most recent recommendation that you made,
16 there's language to the effect of internalizing and
17 suppressing anger also exacerbates his angina. Now, how do
18 you know that that exacerbates his angina?

19 A. It's not necessarily -- any stressor -- I mean, it
12:44PM doesn't have to be specific, but any stressor, is known
21 that -- you know, because he had anginal episodes, that
22 any -- and I'm sure you're aware, everybody is, that
23 emotional stress or even physical stress is going to -- in a
24 person that's compromised in his cardiovascular status, is
12:45PM going to experience chest tightness, shortness of breath.

12:45PM That's nothing new.

2 Q. How did you know he has angina?

3 A. Well, he described that he has chest pain. I
4 looked in the record that -- that was the case and that he

12:45PM was on nitroglycerin and that is another medication,
6 Lopressor, I believe, for that. So that was an established
7 condition.

8 Q. How did you know what kind of effect that his
9 pursuit of the Z Code had on his angina?

12:45PM A. Do you mean --

11 THE COURT: You can ask a different question.

12 Q. Did you include this language that his angina acts
13 up, or words to that effect, because he asked you to?

14 A. Oh, yeah. He said -- well, I thought that that
12:46PM was legitimate to put in here. Like I didn't think that
16 there was anything -- I mean, this is, again, all real and
17 truthful and he asked if I would also include that, and I
18 said, you know, just assure me it's just another fact. I
19 mean, these are a bunch of facts. And that is true,
12:46PM suppressing anger is an effect on the angina and it would be
21 in everybody's case. And that's what's advised in cardiac
22 patients to prevent especially hostility is one of the worst
23 feelings as far as it's impact.

24 Q. The facts that are contained -- the way that you
12:46PM described it, the facts that are contained in these letters,

12:47PM are those as related to you by Mr. DeFranco?

2 A. Well, yeah, because a lot of -- everything here is
3 subjective, hostility, emotions. Have I ever seen him in
4 action, well, no, but the history reveals consistence of
12:47PM angina.

6 THE COURT: I'm going to interrupt. For example, on
7 the angina, would you have gone to the medical records to
8 look up whether or not he was using more nitroglycerin
9 tablets, or did you write in that he was using more
12:47PM nitroglycerin because he told you? Do you understand?

11 THE WITNESS: Well, he told me he was using more
12 nitroglycerin.

13 THE COURT: So you wouldn't have gone to check that.
14 You wrote that in because he related it to you.

12:47PM THE WITNESS: Yeah. That was legitimate to put in
16 there.

17 THE COURT: I just wanted to know where that came from,
18 okay.

19 MR. BAREFORD: If I could have one moment, Your Honor,
12:48PM I think I'm close to being finished.

21 BY MR. BAREFORD:

22 Q. I just want to run some dates past you. Tell me
23 whether or not this sounds consistent with your memory,
24 August 20, 2004 he expressed bitterness over the prospect of
12:48PM being transferred if he pursues his Z Code --

12:48PM

A. Yes.

2

Q. -- through a Federal Court action.

3

A. Uh-huh.

4

Q. September 3, 2004, he expressed fear that he could

12:48PM

get transferred as a result of pursuing a Z Code.

6

A. Yes.

7

Q. October 8, 2004, once again, he expressed a fear

8

that his persistence would get him transferred.

9

A. Yes.

12:48PM

Q. All of those dates were before October 23, 2004.

11

A. Yes.

12

MR. BAREFORD: That's all that I have. Thank you, Dr.

13

Lindemuth.

14

THE COURT: All right. Now, on redirect, you must ask

12:49PM

only questions having to do with the cross-examination. You

16

can't open up a new area of questioning; do you understand?

17

MR. DEFRANCO: Yes.

18

19

REDIRECT EXAMINATION

12:49PM

BY MR. DEFRANCO:

21

22

Q. Doctor, Counsel just asked you if those are the

23

only dates that I've ever expressed my worry about transfer

24

was in 2003, or was it not? Did I express concern --

12:49PM

THE COURT: Actually, he asked, do you recall.

12:49PM MR. DEFRANCO: He was specifically saying 2003.

2 MR. BAREFORD: If I might explain: To the extent my
3 question was less than clear, I'll start by -- I asked her
4 specifically about particular dates. I didn't mean to limit
12:49PM her testimony only to those dates.

6 THE COURT: All right.

7 BY MR. DEFRANCO:

8 Q. Did I express to you -- and you came to the RHU to
9 see me after the alleged threat on the staff member,
12:49PM correct?

11 A. Uh-huh.

12 Q. After I got out of RHU, did I express to you a
13 worry about being transferred; this would be in 2002?

14 A. Yes.

12:50PM Q. Has that been a consistent worry of mine --

16 A. Well --

17 Q. -- starting with 2002 since the instance -- the
18 time I went to the RHU?

19 A. Yes, because very frequently there's a separation,
12:50PM right? If you assault somebody or threaten somebody, it's
21 very usual that --

22 Q. No. My question is this --

23 A. Yes.

24 Q. -- I had since 2002 consistently expressed a worry
12:50PM about being transferred; incorrect or correct?

12:50PM A. Correct.

2 Q. Okay. Now, on cross-examination, Counsel stated
3 that it -- and it was implied that I somehow put words in
4 your mouth, to make this report. Can you tell me which
12:51PM words I put in that report.

6 A. Well, I don't think you put words in my mouth.
7 But he mentioned to add, and I thought that was legitimate.
8 I mean, it's not that you put words in my mouth, there's
9 nothing here that isn't reflective already in my notes of

12:51PM you. And nothing that medical -- basically, I've taken the
11 main points of my notes, of my impressions, and the
12 impression of the medical department, and put it in a memo
13 form.

14 Q. Let me ask you this: When I was asking you what
12:51PM the criteria was for the Z Code, was that it? They don't
16 tell people what the criteria is, because you don't even
17 know.

18 A. I don't know, it might be official. I don't know.
19 That is, again, since I'm not part of the committee, I
12:52PM cannot speak for them. They may have a set of -- I know,
21 for instance, homosexuality I know. But if there's other
22 criteria, I don't know because -- since the mental health is
23 not -- you know, really that kind of leaves me out.

24 Q. I understand that. And my point is this: I think
12:52PM what Counsel was getting at was I was trying to somehow

12:52PM figure out a way to get a Z Code -- and I'm assuming this,
2 and I was asking you what the criteria was.

3 My question to you was: When I was asking you
4 what is the criteria, was it a question based upon like I
12:52PM don't know what it is, what is the criteria?

6 THE COURT: Do you recall that discussion between the
7 two of you about criteria of the Z Code status -- for the Z
8 Code status; do you recall that conversation with him?

9 A. Yes.

12:53PM Q. And I wanted to know what the criteria was because
11 no one would tell me?

12 A. Yes. And I wasn't much help because I didn't
13 know.

14 Q. And I agree with that. Let me ask you this: In
12:53PM regard to these reports as Counsel indicated earlier, the
16 staffing in 2004 for Z Code, this March 2004, and can you
17 tell the Court, did you speak with Psychologist Riley and
18 did you, in fact, speak with my counselor, Ms. Hostu
19 (phonetic), and did you fax Ms. Hostu a copy of your report
12:53PM and recommendation?

21 THE COURT: Sir, one at a time. Did you speak with Dr.
22 Riley?

23 Q. Regarding the status of my Z code in March of this
24 year?

12:54PM A. Yeah, but --

12:54PM MR. DEFRANCO: He's not a doctor, Your Honor, he's a
2 psychologist.

3 A. Yeah, but he wasn't -- that still was something
4 that was initiated by you, the inmate, right?

12:54PM Q. My question is: Did you speak to him regarding my
6 Z Code?

7 A. Regarding the Z Code.

8 THE COURT: In March?

9 Q. In March?

12:54PM A. It wouldn't have been anything very --

11 Q. Did you, yes or no?

12 A. Yes. I think there are many issues in -- well, I
13 can't clearly remember, but it could have been so because we
14 have meetings.

12:54PM Q. Did you speak to my counselor regarding my Z Code
16 sometime this year?

17 A. Over the phone, yeah, about -- that you were
18 interested in having another staffing.

19 Q. And subsequent to that phone call, did you send
12:55PM her your memo of recommendation that I be Z Coded to be put
21 in my file?

22 A. Yes, because, you know --

23 Q. It went that far?

24 A. Yes, because it was -- it was --

12:55PM Q. You took it to -- I wasn't done with my question.

12:55PM You took it this far as to speak with Mr. Riley, who was
2 chief psychologist -- he's not a doctor.

3 THE COURT: He's not a Ph.D?

4 Q. No. And you spoke to him, and you spoke to my
12:55PM counselor, and then you faxed her -- or sent her somehow a
6 report where I needed to be Z Coded.

7 A. Yeah, because I need to get --

8 Q. Yes or no, first.

9 A. Well, yes, but --

12:55PM THE COURT: She's allowed to say what --

11 A. I got to get both sides of the story here because
12 it could be that you're telling me that you need a Z Code
13 and then maybe there's something that the unit manager or
14 counselor knows that would be inappropriate for you to be in
12:56PM a single cell and that, for instance, it made no difference.
16 I wanted to get their perspective.

17 Q. Did my counselor indicate to you that I didn't
18 need to be Z Coded?

19 A. That, I didn't -- no. It was basically that I
12:56PM indicated to her that you were interested in being staffed
21 for a Z Code and that she was going to arrange that.

22 Q. Okay. And in my file -- when we have our
23 meetings, in my file, is it in my file how much
24 nitroglycerin I'm taking? Is that -- is my medical chart
12:57PM before you so you can see it?

12:57PM A. Well, we have the medical chart.

2 Q. And have we gone -- you and I together, walked
3 into the medical chart room so you could pull my old chart
4 out so you could review it?

12:57PM A. Yeah.

6 Q. So my question is this: The nitro. I was
7 taking -- nitroglycerin pills, didn't just come from my
8 mouth, you also saw it, right?

9 A. Yes. It's in the record.

12:57PM Q. It's there, correct?

11 A. Absolutely.

12 Q. And if I'm having chest pain and I have never
13 taken nitro and all of a sudden I'm talking it now, and I'm
14 pretty healthy, I play sports, I'm not overweight, I'm
12:57PM taking nitro., aspirin, and Lopressor, these medications
16 that I was not pumping in my body before, I am nine months
17 approximately after the Z Code was removed, would that be
18 consistent with your report about my -- how did he word it,
19 with my heart, internalizing, whatever it is you wrote?

12:58PM A. Okay. You've got to understand that all of these
21 are risk factors.

22 Q. Were those your words or my words? When you came
23 up -- when we went over the nitro aspect of --

24 THE COURT: She answered the question. She said they
12:58PM were her words.

12:58PM A. Yes, they were.

2 Q. Okay.

3 A. But what I'm saying is the risk factor -- you
4 mentioned, well, I'm not obese, being inactive and being
12:58PM overweight, smoking, high blood pressure, those are risk
6 factors, but that doesn't mean you're going to 100 percent
7 develop any type of heart disease, just that these are risk
8 factors. Stress is a risk factor. And naturally, it would
9 exacerbate, whether it's -- you know, if you have

12:59PM physical -- putting physical stress on the heart, right, by
11 physical -- like if you decided to run, I don't know if your
12 heart could take it.

13 THE COURT: Any other questions?

14 Q. Yes. I just want to know this: Did I tell you to
12:59PM put that in your memo -- or your report, did I tell you to
16 put that there?

17 A. No. Basically, you offered another point, which I
18 thought was okay, I'll throw this point in.

19 Q. Did I tell you to do that?

12:59PM THE COURT: She said you offered.

21 A. You also --

22 THE COURT: This is another point.

23 A. -- made reference to the point you need more
24 nitroglycerin these days because you were in a double cell.

1:00PM So you asked if I would also point that out, and I thought

1:00PM that that's fine to point -- that it's the truth.

2 Q. Was it manipulative for me to tell you that?

3 THE COURT: No, no. You've asked her that question,

4 you're asking her again. The ultimate issue is mine to

1:00PM decide whether or not that's the case.

6 MR. DEFRANCO: I'm getting to where she -- where

7 Counsel was trying to take it to.

8 THE COURT: Well, that's the argument he's going to

9 take and you're going to argue the opposite. We just need

1:00PM the facts from her; do you understand that? You get the

11 facts out, then he says, yes, he was being manipulative, and

12 you say, no, I wasn't. She said, I was just -- you know,

13 that's how we do it. We don't ask her to make that

14 decision.

1:00PM MR. DEFRANCO: Fair enough, Your Honor.

16 THE COURT: All right. Any other questions?

17 BY MR. DEFRANCO:

18 Q. Just to make it clear, and not to belabor the

19 issue, I just want to make sure I'm clear, you did talk to

1:01PM my counselor this year about me being Z Coded, you did talk

21 to Mr. Riley, the psychologist --

22 THE COURT: Those are all asked and she answered yes to

23 all of those.

24 MR. BAREFORD: Your Honor, if I may, with respect to

1:01PM the one, Riley, I don't think she recalled whether or not --

1:01PM she recalled speaking with him, but I don't think she
2 specifically recalled whether or not they talking about his
3 Z Code status.

4 A. I think it was you were interested in it and that
1:01PM needed to be staffed -- to initiate the staffing process.

6 But as far as -- that's really all about it. I mean --

7 THE COURT: She didn't specifically recall March.

8 A. That's why this memo is there because in its
9 original or verbal form that Mr. Riley is part of the Z
1:01PM Code, right, yeah.

11 Q. And, Your Honor, I've got one last question: And
12 if you could just -- and I don't know if I'm going out of
13 cross-examination or not --

14 THE COURT: I'll tell you.

1:02PM Q. -- but if I am, it's something I brought up. It's
16 important to this case I believe in this respect: You wrote
17 this report, this last report, in August of 2004
18 supporting -- or getting a recommendation that I be Z Coded,
19 I have a hearing subsequent to that before Your Honorable
1:02PM Judge Paradise Baxter --

21 THE COURT: In November.

22 Q. -- right, and November 8th you sign an affidavit
23 and met with Mr. Barr, and you never answered the question
24 on direct, I wanted to know what Mr. Barr said -- who was
1:03PM present and what did Mr. Barr say to you to get you to sign

1:03PM that affidavit?

2 A. Well, it was my decision to sign the affidavit
3 because --

4 Q. My question was: What did Mr. Barr say to you?

1:03PM A. He had to tell me the reason why he was asking me
6 to come to the office and what the particulars were.

7 Q. I want to know what that is.

8 A. Well, that you had taken the memo beyond the Z
9 Code and went to argue for -- in the judicial Federal lairs
1:03PM of the system and that it was -- you know, it was a --

11 Q. Was there a precedent? Did he say that it was a
12 dangerous precedent and it's never happened before? Did he
13 say your memo created a dangerous precedent that never
14 happened before?

1:04PM THE COURT: Did you tell the Plaintiff that Mr. Barr
16 told you that it was a dangerous precedent?

17 A. I had to tell him that, you know, this was --

18 Q. This is a yes or no.

19 A. -- appropriate.

1:04PM THE COURT: Did he say that to you?

21 Q. Mr. Barr told you that.

22 A. Well, how else was this -- yeah, he had to tell me
23 that.

24 Q. And by you making that recommendation was going to
1:04PM open the floodgate for other inmates to follow through,

1:04PM correct?

2 THE COURT: If he said that, he said that. Did he say
3 that?

4 Q. You have to be honest.

1:04PM A. Yeah. But I agree with that.

6 Q. I'm not asking what you agree with.

7 A. It's not possible, and it would be impractical.

8 Q. Did Mr. Barr call you into a room with another
9 female that's unknown to me, that's unknown to you, and tell
1:05PM you that what you did is unacceptable about these memos and
11 that what happened at Albion has never happened before?

12 THE COURT: That's a lot of things; did he say all
13 those things?

14 Q. I'm just trying to make it faster, was this a
1:05PM conversation that we had?

16 A. Yes, that's true. And that's what was significant
17 about it and I -- yes.

18 THE COURT: You had written that in one of your --

19 MR. DEFRANCO: That's obstruction of justice, Your
1:05PM Honor, and intimidating this witness.

21 THE COURT: Mr. DeFranco, you can make that argument to
22 me at another point. Let's finish this; do you have any
23 other questions for the witness?

24 MR. DEFRANCO: I have no other questions, Your Honor.

1:05PM THE COURT: All right. Anything else from you?

1:05PM MR. BAREFORD: Yes, ma'am.

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RECROSS-EXAMINATION

4

BY MR. BAREFORD:

1:05PM

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Q. Dr. Lindemuth, to the extent that you can answer this question with a yes or no, that's perfectly fine, I don't want to limit your answer, but if a yes or no is sufficient, that's fine.

1:06PM

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When you took this walk down to where the medical records are maintained and saw that Mr. DeFranco was taking nitroglycerin, did you choose to do that on your own or was that -- let me rephrase the question: Did you do that because he insisted that you go down and look at what other medications he was on?

1:06PM

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A. I didn't go down to look at anything. The medical records and the psychiatric records are in the same chart because psychiatry is considered a medical discipline. So all I had to do is flip some pages to see where the medical section was, and, yeah, that was in there.

1:06PM

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22

23

Q. Was --

A. Yeah. It wasn't initiated -- did he bring that to my attention?

24

Q. That's my question.

1:06PM

A. Yes.

1:06PM Q. And to the extent when anyone would ever contact
2 you about Z Code, these other folks during the staffing or
3 even Mr. DeFranco himself, was it always a result of someone
4 coming and contacting you to query about the Z Code status,
1:07PM or did you ever initiate and push out a recommendation for Z
6 Code that no one asked you to prepare?

7 A. Never. That would be -- no. I can't do that
8 because that's -- it's just -- even though, as I said,
9 ideally, yeah, but there's no possibility. And plus,
1:07PM knowing that mental health is not going to be considered why
11 even do that, no.

12 THE COURT: All right. Thank you. We are going to
13 take a recess until 2:15 and we'll be ready to start up
14 again. You are excused.

1:07PM

16 (Recess taken at 1:08 p.m.)
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